

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RANDY LEWIS WILLIAMS,

Defendant-Appellant.

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UNPUBLISHED

March 3, 2005

No. 252730

Wayne Circuit Court

LC No. 03-001048-01

Before: Kelly, P.J., and Saad and Smolenski, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of three counts of third-degree criminal sexual conduct, MCL 750.520d(1)(a), for engaging in three separate acts of sexual intercourse with his female cousin, who turned fifteen years old on November 6, 2002. Defendant was sentenced to three concurrent prison terms of three to fifteen years each. He appeals as of right. We affirm.

The victim testified that, between October 26 and November 16, 2002, she had sexual intercourse with defendant, who was thirty-one years old, on three occasions in the bathroom of her mother's home where they both lived. She did not fight defendant on any of the occasions, although she struggled with him the first time he dragged her into the bathroom to have intercourse. On November 16, 2002, the victim and defendant were in the bathroom together when the victim's mother knocked on the door. After the victim left the bathroom, her mother found defendant hiding in a large closet in the bathroom. The victim's mother testified that defendant initially told her, "it's not what you think." He later said, "I know it look bad." She was very upset, suspected that defendant and the victim were having a sexual relationship, and told defendant to get out of her house. After defendant left, the victim's mother confronted the victim and the victim told her about the sexual contacts with defendant. The following morning, defendant returned to talk to the victim's mother. She swore at him and told him that he had no business "fuckin" her baby. Defendant replied, "I know. I shouldn't have done that."

Defendant first argues on appeal that he was deprived of his right of confrontation when the trial court precluded him from questioning the victim about her sexual history with another male. Defendant argues that the testimony was permissible to show that the victim may have fabricated her allegations against defendant to cover up that she was having sexual relations with someone else. See, e.g., *People v Hackett*, 421 Mich 338, 348; 365 NW2d 120 (1984) (noting that evidence of a complainant's sexual conduct may be probative of a complainant's ulterior

motive for making a false charge); MCL 750.520j. We conclude that this issue was waived. When defense counsel raised this issue at trial, he expressed satisfaction with the trial court's ultimate ruling. The trial court permitted defendant to inquire whether the victim knew what sperm looked like before her sexual encounters with defendant. It declined, however, to allow inquiry about the victim's prior sexual relationships with other people. After the trial court announced its decision, defense counsel indicated that he believed he could operate within the parameters set by the trial court, that those parameters were "fine," and that the court's ruling basically resolved the issues about which he was concerned. An attorney may waive a defendant's rights with respect to the admission of evidence, and counsel may decide what agreements to conclude regarding the admission of evidence. *People v Carter*, 462 Mich 206, 217-219; 612 NW2d 144 (2000). An expression of satisfaction with a trial court's decision effects waiver of the issue. *Id.* at 219. Because the issue was waived, there is no error for this Court to review. *Id.*

Defendant also challenges the trial court's scoring of the sentencing guidelines. He argues that it was improper to score both twenty-five points for offense variable (OV) 13, MCL 777.43(1)(b), and twenty points for prior record variable (PRV) 7, MCL 777.57, because, by doing so, his concurrent convictions were effectively counted twice in the calculation of his sentencing guidelines. This issue was raised before, and rejected by, the trial court in a post-sentencing motion; therefore, it was properly preserved. MCL 769.34. The issue of whether both variables could be scored, is one of law. Issues of law are reviewed de novo. *People v Aguwa*, 245 Mich App 1, 3; 626 NW2d 176 (2001).

Where sentencing guideline variables are directed at different purposes, a trial court's assessment of points under each variable is proper. *People v Jarvi*, 216 Mich App 161, 164; 548 NW2d 676 (1996). OV 13 and PRV 7 address different sentencing considerations. OV 13 is scored at twenty-five points where "the offense was part of a pattern of felonious criminal activity involving 3 or more crimes against a person." MCL 777.43(1)(b). All crimes occurring in a five-year period, including the sentencing offense, must be counted regardless of whether the offenses resulted in convictions. MCL 777.43(2)(a). Thus, OV 13 accounts for all criminal behavior directed against other people within a five-year period. PRV 7, however, is scored for two or more subsequent or concurrent felony convictions, regardless of their category. MCL 777.57.

Defendant provides no relevant authority to support his position that both variables could not have been scored in his case, and we find that the Legislature's plain intent was to score both of these provisions under circumstances like those presented herein. "The primary goal of statutory interpretation is to ascertain and give effect to the Legislature's intent." *Aguwa, supra* at 3. This Court must look at the specific language of the statute and presume that every word, phrase, and clause has meaning. *Id.* at 3-4. Where a statute is unambiguous, we must enforce it as plainly written. *People v Van Heck*, 252 Mich App 207, 211; 651 NW2d 174 (2002). The statutory language set forth in OV 13 requires consideration of all crimes within a five-year period when scoring that variable. If the Legislature had intended that concurrent convictions not be considered in scoring OV 13, where the same concurrent convictions are used to score PRV 7, it could have done so by writing an exception into the statutory language. It chose not to do so, and we will enforce the statutory language as written. *Id.* See also *People v Morales*, 240 Mich App 571, 576; 618 NW2d 10 (2000) (declining to read an exception into a statute when the

Legislature has chosen not to include such an exception). Further, this Court has previously affirmed the scoring of both variables on other occasions. See, e.g., *People v Harmon*, 248 Mich App 522, 532; 640 NW2d 314 (2001). In *Harmon*, the defendant was convicted of four concurrent offenses, arising out of the photographing of two nude fifteen-year-old girls on the same date. *Id.* at 524. He was scored under both PRV 7 and OV 13 based on those concurrent convictions. *Id.* at 532. We affirm the scoring of both variables in this case as well.

We additionally find no merit to defendant's unsupported argument that he should not have been scored twenty-five points for OV 13 because his only crimes were the concurrent convictions involved in this case. Defendant points out that his crimes occurred within a short period of time of each other and did not involve numerous victims or different types of crime. But MCL 777.43(2)(a) requires that all crimes within a five-year period be scored, including the sentencing offenses. It makes no exception for crimes that are similar or occurred closely together. In *Harmon, supra* at 532, this Court held that OV 13 was properly scored at twenty-five points based on four concurrent felonies, all of which occurred on the same day, involved only two victims, and involved the same act. *Id.* at 524. In this case, defendant's three concurrent convictions were sufficient to establish the requisite pattern of felonious criminal activity to support a score of twenty-five points for OV 13.

Defendant also argues that his counsel was ineffective for failing to challenge the double scoring of his concurrent convictions and failing to review the sentencing guidelines. This issue is not properly before this Court because it was not raised in the statement of the questions presented. *People v Miller*, 238 Mich App 168, 172; 604 NW2d 781 (1999). The issue may also be deemed abandoned because defendant has failed to explain or rationalize his position in his cursory argument. *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998). We note, however, that the scoring issue has no merit because both PRV 7 and OV 13 were properly scored, and defendant's sentence is within the guidelines.

Affirmed.

/s/ Henry William Saad

/s/ Michael R. Smolenski